

Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased and owe Use Tax on their cost price of such property. See 86 Ill. Adm. Code 130.220. (This is a GIL).

August 9, 2002

Dear Xxxxx:

This letter is in response to your letter dated May 9, 2002. Your letter had been misdirected within the Department, and we apologize for the delay in responding to your inquiry. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be located on the Department's website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

We are a leasing company in STATE. In the past we have always collected Illinois Tax up-front when we've done a lease in Illinois and the Illinois dealer remitted the tax. Recently we started doing equipment leases, as well as leases in Illinois when the dealer is not in Illinois.

When we signed up to remit Illinois sales tax we were sent the enclosed forms. However, since then we have learned that a lease with a \$1 buyout is considered a conditional sale, and we can collect the tax on the monthly lease payments, rather than up-front.

Our forms are pre-printed and the 'Not Applicable' lines are filled in, although I believe this is where I need to report receipts. We are not making purchases in Illinois, we are receiving lease payments. Please send me correct forms or tell me where on this form I should be reporting the tax.

Thank you for your help.

**DEPARTMENT'S RESPONSE:**

I have confirmed with the Department's Central Registration Division that your corporation is not registered for Retailers' Occupation Tax purposes. I am forwarding a copy of your letter and this letter to that Division along with a request that your corporation's registration be changed. In addition, we recommend that you also contact the Department's Central Registration Division at (217) 785-3707 and inform them that your corporation is making taxable retail sales. Once that registration change is made, you will be sent the proper forms.

I have also set out some general information below regarding leasing in Illinois and conditional sales agreements. The State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases.

A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax.

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See the enclosed copy of 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

As stated above, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See subsection (a)(3) of the enclosed copy of 86 Ill. Adm. Code 150.310.

Under Illinois law, lessors may not "pass through" their tax obligation to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where lessees agree to reimburse lessors for the amount of the tax paid, then lessees are obligated to fulfill the terms of the private contractual agreements.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq. There are also some limited exceptions to the general rule described in the preceding paragraphs. There is an exemption from Retailers' Occupation Tax for sales of tangible personal property to lessors who lease that property to governmental bodies under leases of one year or longer. See the enclosed copy of 86 Ill. Adm. Code 130.2012. In addition, the sale of computers and communications equipment and equipment used in the diagnosis, analysis, or treatment of hospital patients is exempt when sold to lessors who lease that property under leases of one year or longer with hospitals to whom the Department has issued a tax exemption identification number. See the enclosed copy of 86 Ill. Adm. Code 130.2011.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton  
Associate Counsel

TDC:msk  
Enc.

cc: Central Registration Division